IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.12604, 12605 of 2006
W.P.M.P.Nos.18561, 18562 of 2006

W.P.No.12604 of 2006

K. Raman ... Petitioner

Vs.

1. The Director General of Police,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Vellore Range, Vellore.

3. The Superintendent of Police,
Salem District, Salem. ... Respondents.

Prayer: Writ petitions filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus directing the respondents to include the petitioner's name in the 'C' list of Head Constables, fit for promotion as Sub Inspector of Police, for the year 1994 approved in D.O.No.1478/96 (Rc.No.4020/A1/96) dated ....11.1996 of the Superintendent of Police, Dharmapuri, notwithstanding and without reference to the pendency of criminal proceedings in S.C.No.117/96, Sessions Court, Krishnagiri and connected departmental proceedings in P.R.No.3/97, by the Superintendent of Police, Dharmapuri.

W.P.No.12605 of 2006

K. Noorullah Khan ... Petitioner

Vs.

1. The Director General of Police,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Vellore Range, Vellore.

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3. The Superintendent of Police,
Dharmapuri District, Dharmapuri.

**4. **Government of Tamil Nadu,
Rep by Secretary to Government,
Home (Police) Department,
Fort St George, Chennai.9. Respondents.**

**(R4 Impleaded as per Order dated 5.4.2007
in MP.No 1/07 in WP.No. 12605/06)**

Prayer: Writ petitions filed under Article 226 of Constitution of India, praying this Court to issue a writ of mandamus directing the respondents to include the petitioner's name in the panel of Inspectors of Police fit for appointment by recruitment by transfer as Deputy Superintendent of Police (Category-1) for the year 2000-2001, issued in G.O.Ms.No.1026, Home (Police-2) Department, dated 15.10.2001 notwithstanding and without reference to the pendency of criminal proceedings in S.C.No.117/96, Sessions Court, Krishnagiri and connected departmental proceedings initiated by the Superintendent of Police, Dharmapuri.

For Petitioners : Mr.M.Ravi

For Respondents : Mr.I.Paranthaman,
Government Advocate

COMMON ORDER

By consent of the learned counsel for the petitioner as well as the learned Government Advocate, the writ petition is taken up for final disposal.

2. Petitioners in the respective writ petitions seek direction to the respondents to include their names in the list of persons, fit for promotion to the next higher post respectively, without reference to the pendency of S.C.No.117 of 1996 on the file of the Sessions Court, Krishnagiri and connected departmental proceedings initiated against them.

3. Petitioner in W.P.No.12604 of 2006 is a Head Constable and the petitioner in W.P.No.12605 of 2006 is an Inspector of Police, and they are accused No.171 and 157 respectively in the criminal case pending in S.C.No.117 of 1996 on the file of the Sessions Court, Krishnagiri. The said criminal case is registered by the Superintendent of Police, Dharmapuri, in connection with the assault of the villagers of Vachathi on 20.6.1992 for the offences under sections 143, 147, 149, 323, 427 IPC, read with section 3(1)(10)(11)(13)(15) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In the said case, the

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Police Officials, Officials of the Forest Department and the Officials of the Revenue Department are arrayed as accused. The petitioners were also proceeded departmentally in P.R.No.3 of 1997 and a charge memo under Rule 3(b) is pending against them.

4. According to the petitioners, they are fit for promotion to the post of Sub-Inspector of Police and Deputy Superintendent of Police respectively, but their names were not considered due to the pendency of the above criminal case and departmental proceeding. Since the petitioners are denied promotion due to the pendency of the departmental proceeding and criminal case, they have filed the above writ petition by contending that other accused in the same criminal case of Vachathi incident were granted further promotion subject to the outcome of the criminal case. Similarly, several Forest Officials, who are involved in the same incident, numbering 13 have been promoted to the next higher post subject to the result of the criminal case.

5. It is also stated in the affidavit that a Division Bench of this Court in W.P.No.9046 to 9048 of 2004 by order dated 6.2.2006 directed to consider the promotion of those officials in accordance with the rules, without reference to the pendency of the criminal case and subject to the filing of the affidavit of undertaking by the concerned and several of them were given promotion subject to the result of the criminal case and departmental proceeding and subject to review thereafter. Hence the petitioners are also praying for similar treatment. Petitioners have submitted representation on 10.12.2005 and 20.12.2005 respectively and prayed for promotion subject to the result of the criminal case as well as departmental proceeding as it has been given to the similarly placed accused in the very same criminal case.

6. The learned counsel for the petitioners submits that following the Division Bench judgment referred above, I have issued similar direction in W.P.No.5617 of 2006 dated 29.3.2006 on filing affidavit of undertaking by the concerned petitioner and the said order is also implemented by the respondents. In the said order, I have followed the judgment of the Division Bench in W.P.Nos.9046 to 9048 of 2004 dated 6.2.2006 wherein paragraphs 9 and 10 read as follows,

> "9. Without going into the merits and without prejudice to the various legal contentions raised in the writ petitions and in view of the affidavit of the petitioner dated 4.2.2006 and the memo dated 6.2.2006 filed by the counsel for the respondents and the affidavits of undertaking filed by the respondents, the Department shall implement the order of the Tribunal. Such promotion shall be subject to the result of the show cause notice proceeding said to be pending against Mariyappan and 12 others. The respondents shall abide by the order of the appropriate authority or the

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authorised officer who will pass the order in the proceeding in respect of the said Mariyappan and 12 others. It is made clear that if any order is passed against the said Mariyappan and 12 others, reverting them to lower post, the respondents will also be automatically reverted without any further notice or proceedings.

10. This order is being passed on its own peculiar facts and circumstances in view of the fact that the Government has promoted the officials in the Police and Revenue Departments involved in the same incident and keeping in view the undertaking given by the respondents, such order shall not be treated as a precedent in other matters. The writ petitions are disposed of accordingly. No costs."

In the present cases, petitioners have not filed any affidavit as it was filed in other cases.

7. Even though counter affidavit is filed in the writ petitioner opposing the claim of the petitioners, it is admitted that the other accused in the same criminal case involved in the Vachathi incident were given promotion temporarily subject to the result of the criminal case and departmental proceeding, under Rule 39 of the General Rules of the Tamil Nadu State and Subordinate Rule.

8. In the light of the above undisputed facts, the respondents are directed to consider and pass orders on merits in the representations submitted by the petitioners dated 10.12.2005 and 20.12.2005, subject to the affidavit of undertaking to be filed by the petitioners before the respondents. While considering the claim of the petitioners, it is open to the respondents to take note of the promotion given to the similarly placed persons who are co-accused in the above criminal case, as admitted in the counter affidavit, within a period of four weeks from the date of receipt of copy of this order. Petitioners are directed to submit affidavit of undertaking before the respondents within one week from the date of receipt of copy of this order.

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The writ petitions are ordered in the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/
Asst. Registrar (Records)
06/02/2007

(**Corrected order to be issued)

Sd/
Asst. Registrar (CS-I)

/true copy/

Sub Asst.Registrar

To

1. The Director General of Police,
Chennai - 600 004.

2. The Deputy Inspector General of Police,
Vellore Range, Vellore.

3. TheSuperintendent of Police,
Salem District, Salem.

4. The Superintendent of Police,
Dharmapuri District, Dharmapuri.

5. The Secretary to Government,
Home (Police) Department,
Fort St George, Chennai.9.
(R4 Impleaded as per Order dated 5.4.2007
in MP.No 1/07 in WP.No. 12605/06)

To be Sunstituted to the Order already despatched on 06/02/2007.

+ Two CCs to Mr. M. Ravi Advocate SR Nos.6866&6865
SGL (co)
sg 06/02, sg 19/6/07

Order in
W.P.Nos.12604, 12605/2006
5-2-2007

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